

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

YU-YING CHEN,	)	Case No. SUSP-97-0036
	)	
Appellant,	)	FINDINGS OF FACT, CONCLUSIONS OF
	)	LAW AND ORDER OF THE BOARD
v.	)	
	)	
UNIVERSITY OF WASHINGTON,	)	
	)	
Respondent.	)	

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**I. INTRODUCTION**

**1.1 Hearing.** This appeal came on for hearing before the Personnel Appeals Board, HOWARD N. JORGENSEN, Chair; WALTER T. HUBBARD, Vice Chair; and NATHAN S. FORD JR., Member. The hearing was held at the University of Washington, South Campus Center, Room 246, Seattle, Washington, on February 18 and 19, 1999.

**1.2 Appearances.** Appellant Yu-Ying Chen was present and was represented by James H. Hopkins, Attorney at Law, Skellenger Bender, PS. Respondent University of Washington was represented by Diana Moller, Assistant Attorney General.

**1.3 Nature of Appeal.** This is an appeal from a disciplinary sanction of a one week suspension for illegal use of state resources, neglect of duty and violation of published institution or related board or Higher Education Personnel Board rules or regulations. Respondent alleges that Appellant accessed personal "stock market" information using a computer in a operating room.

1.4 **Citations Discussed.** WAC 251-12-240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987).

## II. FINDINGS OF FACT

2.1 Appellant Yu-Ying Chen is a Registered Nurse (RN) 2 and permanent employee for Respondent University of Washington (UW). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on October 16, 1997.

2.2 By letter dated September 16, 1997, Robert H. Muilenburg, Executive Director of the University of Washington Medical Center, suspended Appellant for one week, effective September 22, 1997, for illegal use of state resources, neglect of duty and violation of published institution or related board or Higher Education Personnel Board rules or regulations. A memorandum dated August 21, 1997, to Mr. Muilenburg, Executive Director, from Brian Baker, Nurse Manager and Appellant's supervisor, outlined the reason for the suspension. In the memorandum, Mr. Baker alleged that Appellant was observed using a computer in an operating room to access personal stock market information during a surgical procedure. (Exh. R-3).

2.3 Appellant has been employed as a Registered Nurse 2 (RN) 2 at the University of Washington Medical Center (UWMC) since January 25, 1993. Appellant's personnel history indicates that she has received no formal discipline but has received two letters of reprimand. On July 3, 1995, Appellant received a written reprimand for being disrespectful and abusive toward a coworker. On February 25, 1997, Appellant received a written reprimand for engaging in a verbal altercation with another employee. (Exh. R-3).

1 2.4 As a part of her duties, Appellant would be assigned as a “circulating” nurse assisting  
2 during a surgical procedure. A circulating nurse is responsible for a variety duties before, during  
3 and after a surgery. During the surgery, the circulating nurse is primarily responsible for continually  
4 monitoring and anticipating the needs of the surgical team members and the patient, receiving all  
5 specimens, conducting sponge and instrument counts, charting all patient care given, and having  
6 dressing and postoperative supplies available. At the completion of the surgery, the circulating  
7 nurse is responsible for preparing the room for the next case.

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9 2.5 In July 1997, the UWMC’s patient charting system was transitioning from hand written  
10 entries made on a patient chart record to a computerized charting program. Preliminary training of  
11 staff using the software program had taken place by July 1997, but the computer charting program  
12 had not yet been fully implemented and the nurses were making dual entries (written and  
13 computerized) for the purpose of giving the nurses practical computer entry experience before the  
14 written charting system was eliminated.

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16 2.6 Each operating room has a computer available for the circulating nurse to make the patient  
17 computer data entries during the course of a surgery and to enable medical staff to access clinical  
18 information via the Internet.

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20 2.7 On July 31, 1997, Appellant was the assigned circulating nurse for operating room number  
21 one. The scheduled surgery that morning commenced at approximately 7:30 a.m. Early that  
22 morning, Appellant made some initial patient data entries into the computerized patient data chart  
23 using the computer located in operating room number one.

24  
25 2.8 Between approximately 10 a.m. and 10:30 a.m., Appellant returned to the computer to make  
26 additional patient data entries. Appellant noted that the patient data form was no longer on the

1 computer screen. Appellant attempted to get back into the charting program but the computer was  
2 not responding. Appellant returned to her other duties in the operating room. At approximately  
3 noon, as the surgery was ending, Appellant again returned to the computer to access the patient data  
4 patient data form. Appellant clicked on the mouse and stock market information appeared on the  
5 computer screen.

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7 2.9 Dr. Benjamin Greer, who was the attending physician supervising the surgery, observed  
8 Appellant at the computer and noted that the screen on the computer was not a patient data entry  
9 form, which has a distinct blue screen with white lettering. When he approached the computer, he  
10 noted that Appellant was scrolling the screen which was displaying stock market information. Dr.  
11 Greer became concerned that Appellant was viewing this information while a surgery was in  
12 progress. He temporarily left the operating room and asked Appellant's supervisor, Brian Baker, if  
13 it was appropriate for Appellant to access stock market information on the Internet.

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15 2.10 Immediately following his conversation with Dr. Greer, Mr. Baker went to the operating  
16 room where Appellant was participating in a count of sponges and briefly questioned her about the  
17 incident.

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19 2.11 Marcos Antezana, a medical student observing the surgery, also noticed Appellant at the  
20 computer and noted that stock market information was displayed on the screen. After Dr. Greer  
21 stepped out of the operating room, Mr. Antezana went to the computer and clicked either on the  
22 mouse or keyboard which brought up the stock market screen. When Dr. Greer returned, he  
23 advised Mr. Antezana not to touch the computer.

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25 2.12 James Wade, System Administrator, assisted in training of staff, including Appellant, to use  
26 the computers and the Internet. Many nurses were uneasy using computers and he encouraged them

1 to use the computers to research things of interest to them. It is undisputed that other nurses at the  
2 UWMC had an interest in the stock market.

3  
4 2.13 At the time of the incident here, it was not uncommon for evening staff to install Internet  
5 software on UWMC computers, which frequently caused problems for the day staff using the  
6 computers. (Testimony of James Wade). It is also undisputed that “several hundred people” had  
7 access to the operating rooms. (Testimony of Brian Baker).

### 8 9 **III. ARGUMENTS OF THE PARTIES**

10 3.1 Respondent argues that Appellant violated the state’s ethic’s law, completely neglected her  
11 duties as a circulating nurse and exhibited an egregious lack of judgment and respect for patient  
12 rights when she accessed stock market information during a surgical procedure. Respondent asserts  
13 that Appellant’s argument that she brought up the screen inadvertently is not credible because  
14 Appellant knew how and was capable of using computers. Respondent argues that Appellant’s use  
15 of the computer was not *de minimis* and that she put the patient in a vulnerable position while her  
16 attention was diverted elsewhere. Respondent argues that Appellant’s avid interest in the stock  
17 market made her more likely than not the person who opened Netscape and accessed the stock  
18 market that day. Respondent argues that a one week suspension is the appropriate sanction.

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20 3.2 Appellant acknowledges that she owns stocks and that she has an interest in the stock  
21 market. Appellant contends that as she was attempting to perform her charting duties on the  
22 computer, she inadvertently brought up the stock market web page was on the computer screen.  
23 Appellant acknowledges that she manipulated that screen during her attempts to locate the patient  
24 charting screen. Appellant argues that she did not violate the state ethics law when she  
25 inadvertently accessed stock market information. Appellant argues that numerous other people had  
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1 an interest in the stock market and had access to the operating room computers. Appellant argues  
2 that Respondent has not met its burden of proof and asks that the sanction be reversed.

#### 3 4 IV. CONCLUSIONS OF LAW

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6 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
7 herein.

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9 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
10 the charges upon which the action was initiated by proving by a preponderance of the credible  
11 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
12 sanction was appropriate under the facts and circumstances. WAC 251-12-240(1); Baker v. Dep't  
13 of Corrections, PAB No. D82-084 (1983).

14  
15 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
16 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
17 of Social & Health Services, PAB No. D86-119 (1987).

18  
19 4.4 Willful violation of published employing agency or institution or Personnel Resources  
20 Board rules or regulations is established by facts showing the existence and publication of the rules  
21 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the  
22 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

23  
24 4.5 Appellant has consistently admitted that in her attempt to perform the computerized charting  
25 of patient information, she accessed a web page of stock market information. She further  
26 acknowledges that she manipulated the screen in an attempt to retrieve the patient charting program.

1 Appellant's testimony is not in conflict with what Dr. Greer witnessed. The issue here is whether  
2 Appellant inadvertently accessed stock information or whether she did it deliberately. Insufficient  
3 evidence exists for us to conclude that Appellant's acts were deliberate. While we are not  
4 discounting Dr. Greer's testimony, Respondent has failed prove by a preponderance of the credible  
5 evidence that Appellant deliberately accessed stock market information for personal gain.  
6 Therefore, the suspension should be reversed and the appeal granted.

7  
8 **V. ORDER**

9 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Yu-Ying Chen is granted.

10  
11 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

12  
13 WASHINGTON STATE PERSONNEL APPEALS BOARD

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Howard N. Jorgenson, Chair

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17 \_\_\_\_\_  
Walter T. Hubbard, Vice Chair

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19 \_\_\_\_\_  
Nathan S. Ford Jr., Member